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Justice and U.S. Security

Unsuccessful Bid to Prosecute C.I.A. Source Reflects Basic Conflict Between 2 Agencies

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WASHINGTON, April 2—Despite efforts in recent years to reduce the natural tension between law-enforcement officials and intelligence officials, the two still come into conflict.

The latest example involves the efforts of the United States Attorney in San Diego, William H. Kennedy, to obtain an indictment of the former chief of Mexico's national police in connection with an \$8 million automobile theft ring.

When Mr. Kennedy disclosed that the Central Intelligence Agency had played a role in blocking the indictment because the former Mexican official was a key American intelligence source, senior Justice Department officials decided to oust Mr. Kennedy. He has been told that if he does not resign he may be dismissed by President Reagan.

For some people critical of the intelligence agency, the case was confirmation, said a former Justice Department official who declined to be identified, that "crime pays if you are shielded by the C.I.A." Others, more tolerant of the competing interests at stake, said they were encouraged that intelligence and law enforcement officials were talking, rather than fighting, about the problem.

Relations between the Justice Department and the Central Intelligence Agency have long been among the touchiest in Washington. Former officials at both agencies still bristle over past cases and disputes.

A Clash of Basic Aims

"In many of these cases, there is heated controversy," recalled Philip B. Heymann, head of the Justice Department's criminal division in the Carter Administration. "It's an area of competition and conflict in which two fundamental concerns clash. One is keeping national security secrets. The other is winning a fair trial."

The two offices most directly involved in these cases are the Internal Security section of the Justice Department's criminal division and the office of the general counsel at the C.I.A. According to former officials from both offices, mutual animosity can be severe.

"The mind sets are entirely different," said one former Justice official. "The agency views the department as a threat to security. They want to disclose as little as possible. We tended to see the agency as an obstruction to justice."

Panel Criticized Practice

For 20 years, from 1954 to 1974, the tension between Justice and the C.I.A. was resolved by simply letting the intelligence agency decide which cases involving its employees and informers should be investigated. This practice was codified in a 1954 memorandum of understanding between Lawrence Houston, then the intelligence agency's general counsel, and William P. Rogers, who was the Deputy Attorney General. The Rockefeller Commission, which investigated the conduct of intelligence agencies in 1975, criticized the practice as an abdication of prosecutorial power by the Justice Department.

Congressional committees which looked into the practice found a history of criminal cases involving intelligence agents that were either handled internally by the C.I.A. or dropped by the Justice Department at the request of the intelligence agency.

Congressional records show that in one case in the early 1960's, an agent accused of embezzling \$20,000 from the agency was not prosecuted because of "security considerations," including the danger of identifying the agent's cover and the location of the purported embezzlement. The records show that another agent who was accused of stealing \$47,000 was not prosecuted, in part out of fear that the case might expose a clandestine financing network that he had used.

After widespread abuses by intelligence agencies, the memorandum of understanding was terminated and intelligence agencies were ordered by President Ford to report all possible violations of the law to the Justice Department. President Carter, and more recently President Reagan, reaffirmed the policy in executive orders.

It took some time for the C.I.A. to adjust. Although the agency eventually cooperated with Federal prosecutors investigating the activities of Edwin P. Wilson and Frank E. Terpil, two former agency employees who went to work training terrorists in Libya, the C.I.A. was slow to refer the case to the Justice Department in 1976, when intelligence officials first received allegations about the two men.

Agency Now More Cooperative

The Central Intelligence Agency has recently been more responsive. In 1980, for instance, it helped the Justice Department investigate the case of David H. Barnett, a former covert agent who confessed that he had sold sensitive American intelligence information to the Soviet Union.

To facilitate prosecution of cases involving national security information, Congress passed the Classified Information Procedures Act of 1980. The bill established special procedures to deal with defendants who threaten to disclose classified information unless the Justice Department drops its case against them.

Reagan Administration officials say that the San Diego case reflects the changes in policy and attitude. They argue, for example, that despite the sensitive role played by the Mexican suspect, Miguel Nassar Haro, who reportedly provided the United States with information about Soviet and Cuban assistance to guerrillas in El Salvador, the C.I.A. stopped short of pressing the Justice Department not to prosecute.

Such assertions, however, did little to allay the concerns of a former White House official who wondered this week how many questionable sources the agency relies on for information, and how far the C.I.A. would go to protect them. As one Administration official acknowledged, "You don't always have a choice of the people you deal with when you need information."